

Senate, No. 2079

[Senate, June 10, 2009- Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill providing responsible reforms in the pension system (Senate, No. 2026) (*amended by the House* by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4060)]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT PROVIDING RESPONSIBLE REFORMS IN THE PENSION SYSTEM

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 32 of the General Laws is hereby amended by
2 inserting after the word "forty-five", in line 399, as appearing in the 2006 Official Edition, the
3 following words:- through June 30, 2009.

4 SECTION 2. The definition of "Regular compensation" in said section 1 of said chapter
5 32, as so appearing, is hereby further amended by adding the following sentence:- "Regular

6 Compensation”, during any period subsequent to June 30, 2009, shall be compensation received
7 exclusively as wages by an employee for services performed in the course of employment for
8 his employer.

9 SECTION 3. Said section 1 of said chapter 32, as amended by section 15 of chapter 130
10 of the acts of 2008, is hereby further amended by adding the following definition:-

11 “Wages”, the base salary or other base compensation of an employee paid to that
12 employee for employment by an employer; provided, however, that “wages” shall not include,
13 without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts
14 derived from salary enhancements or salary augmentation plans which will recur for a limited or
15 definite term, indirect, in-kind or other payments for such items as housing, lodging, travel,
16 clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation,
17 job-related expense payments, automobile usage, insurance premiums, dependent care
18 assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the
19 payment for termination, severance, dismissal or any amounts paid as premiums for working
20 holidays, except in the case of police officers, firefighters and employees of a municipal
21 department who are employed as fire alarm signal operators or signal maintenance repairmen
22 money paid for holidays shall be regarded as regular compensation, amounts paid as early
23 retirement incentives or any other payment made as a result of the employer having knowledge
24 of the member’s retirement, tuition, payments in kind and all payments other than payment
25 received by an individual from his employing unit for services rendered to such employing unit,
26 regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case
27 of a teacher employed in a public day school who is a member of the teachers' retirement
28 system, salary payable under the terms of an annual contract for additional services in such
29 school and compensation for services rendered by a teacher in connection with a school lunch
30 program or for services in connection with a program of instruction of physical education and
31 athletic contests as authorized by section 47 of chapter 71 shall be regarded as “regular
32 compensation” rather than as bonus or overtime and shall be included in the salary on which
33 deductions are to be paid to the annuity savings fund of the teachers' retirement system.

34 SECTION 4. Section 4 of said chapter 32 of the General Laws is hereby amended by
35 striking out, in lines 5 to 7, inclusive, as so appearing, the words “, that he shall be credited with

36 a year of creditable service for each calendar year during which he served as an elected official;
37 and provided, further”

38 SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by
39 striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the
40 following paragraph:-

41 (o) The service of a state, county or municipal employee employed or elected in a
42 position receiving compensation of less than \$5,000 annually, which service occurs on or after
43 July 1, 2009, shall not constitute creditable service for purposes of this chapter.

44 SECTION 6. Section 5 of said chapter 32, as so appearing, is hereby amended by
45 striking out, in lines 69 and 70, the words “,except for elected officials subject to the provisions
46 of paragraph (b) of subdivision (2) of section ten,”.

47 SECTION 7. Subdivision (2) of said section 5 of said chapter 32, as so appearing, is
48 hereby amended by adding the following paragraph:-

49 (e) A person who has been a member of 2 or more systems and who, on or after January
50 1, 2010, has received regular compensation from 2 or more governmental units concurrently
51 shall, upon retirement, receive a superannuation retirement allowance to become effective on
52 the date of retirement that is equal to the sum of the benefits calculated pursuant to this section
53 as though the member were retiring solely from each system; provided, however, that
54 notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the
55 superannuation retirement allowance attributable to membership in that system to the member;
56 and provided further, that this section shall not apply to any member who has vested in 2 or
57 more systems as of January 1, 2010.

58 SECTION 8. Section 7 of said chapter 32, as so appearing, is hereby amended by
59 striking out, in lines 69 to 73, inclusive, the words “or equal to seventy-two per cent of the
60 average annual rate of his regular compensation for the twelve-month period for which he last
61 received regular compensation immediately preceding the date his retirement allowance
62 becomes effective, whichever is greater; provided, however” and inserting in place thereof the
63 following words:- ; provided, however, that if an individual was in a temporary or acting

64 position on the date such injury was sustained or hazard undergone the amount to be provided
65 under this subdivision shall be based on the average annual rate of the individual's regular
66 compensation during the previous 12-month period for which he last received regular
67 compensation immediately preceding the date such injury was sustained or such hazard was
68 undergone; provided, further",

69 SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by
70 striking out, in line 4, the words ", or fails of nomination or re-election".

71 SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further
72 amended by striking out, in lines 7 to 9, inclusive, the words ", or fails of nomination or re-
73 election, or fails to become a candidate for nomination or re-election".

74 SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further
75 amended by striking out, in lines 50 and 51, the words "fails of nomination or re-election, or".

76 SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further
77 amended by striking out, in lines 72 to 77, inclusive, the words "one of the following
78 circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the
79 employee has failed of reappointment, (3) that the employee's office or position has been
80 abolished, or (4) that" and inserting in place thereof the following words:- : (1) the employee
81 has failed of reappointment; (2) the employee's office or position has been abolished; or (3).

82 SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further
83 amended by striking out, in line 79, the word "six" and inserting in place thereof the following
84 figure:- 10.

85 SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is
86 hereby amended by adding the following paragraph:-

87 (d) If a member is entitled to a return of his accumulated total deductions and requests
88 such a return from the board on the prescribed form, then prior to the return of such
89 accumulated total deductions, the board shall contact the member's employer to determine
90 whether the member owes an obligation to the employer under an employee benefit plan,
91 including a cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that

the member owes the employer under any such plan, the board shall not return the accumulated total deductions until it has received notice from the employer that the obligation has been satisfied.

SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C the following section:-

Section 12D. A retirement system subject to this chapter shall pay all benefits in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan as defined in section 414(d) of the Internal Revenue Code.

SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-

(c) A retirement board may require a member entitled to receive a retirement allowance to designate a financial institution to which shall be directly deposited any payments under any annuity, pension or retirement allowance.

SECTION 17. Section 19A of said chapter 32 is hereby amended by striking out the first paragraph, as so appearing, and inserting in place thereof the following paragraph:-

Any employee of the commonwealth, a city, town, district or other member unit of a retirement system who is retired under this chapter shall, upon the request of the retiring authority paying such pension or retirement allowance, or otherwise may, by assignment made in writing authorize the retiring authority paying such pension or retirement allowance to withhold each month such amount as he may designate for the payment of subscriber premiums applicable to any hospitalization, medical or surgical insurance in effect with a nonprofit hospital and medical service corporation or insurance company at the time of his retirement. In the event that the amount of a retiree's pension check is insufficient to accommodate the entire deduction and upon notice from the retirement board, the employer for whom the retiree last worked and from whom he is retired shall bill the retiree for the employee share of the premiums.

119 SECTION 18. Section 22D of said chapter 32, as so appearing, is amended by striking
120 out, in line 25, the figure “2028” and inserting in place thereof the following figure:- 2030.

121 SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D
122 the following section:-

123 Section 22E. (a) For the purposes of this section, “statutory adjustment to the
124 commonwealth pension liability” shall mean an adjustment that changes the benefits or
125 contributions of classes of members including, but not limited to, early retirement incentive
126 programs, cost-of-living adjustments, the membership of those classes or any amendments to
127 chapter 32 that may change the actuarial liability of the commonwealth pension system.

128 (b) Upon request of a joint standing committee of the general court having jurisdiction
129 or upon request of the committee on ways and means of either branch, the actuary of the public
130 employee retirement administration commission shall conduct and prepare a review, evaluation
131 and financial impact of the statutory adjustment to the commonwealth pension liability, in
132 consultation with other relevant state agencies, and shall report to the committee within 90 days
133 of the request.

134 SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line
135 3, as appearing in the 2006 Official Edition, the words “or district,” and inserting in place
136 thereof the following words:- , district or authority.

137 SECTION 21. Said section 91 of said chapter 32 is hereby further amended by
138 inserting after the word “authority”, in line 84, the words “, including as a consultant or
139 independent contractor or as a person whose regular duties require that his time be devoted to
140 the service of the commonwealth, county, city, town, district or authority during regular
141 business hours.

142 SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section
143 111 and inserting in place thereof the following section:-

144 Section 111. There shall be a special commission to study the Massachusetts contributory
145 retirement systems. The commission shall consist of the secretary of administration and finance
146 or her designee; the state auditor or his designee; the executive director of the public employee

147 retirement administration commission or his designee; the executive director of the state
148 retirement board or his designee; the executive director of the teachers' retirement board or her
149 designee; 3 members of the house of representatives, 1 of whom shall be appointed by the house
150 minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority
151 leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen
152 who shall serve as chair of the commission and shall not be a member of any of the 106
153 contributory retirement systems, 2 of whom shall have professional experience in employee
154 benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal
155 Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president
156 of the Massachusetts AFL-CIO and 1 of whom shall be a member of the Retired State, County
157 and Municipal Employees Association of Massachusetts. The commission shall convene its first
158 official meeting not later than June 1, 2009.

159 The commission shall make a comprehensive study of the Massachusetts contributory
160 retirement systems. The study shall include, but not be limited to: contribution rates paid by
161 employers and employees; vesting periods; the weight given to age versus years of service in
162 the current system; the portability of benefits in the current system; the definition of regular
163 compensation including, but not limited to, whether all forms of compensation taxable under the
164 federal income tax code should constitute regular compensation; cost-of-living-adjustments with
165 special attention paid to the cost of increasing the cost-of-living-adjustments base; current and
166 future employee pension plans and contribution structures; termination allowances pursuant to
167 section 10 of chapter 32 of the General Laws; group classification systems, including the
168 classification of department of correction employees under section 28M of said chapter 32;
169 capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for
170 employees who participate under 2 or more retirement systems; potential costs, savings or
171 benefits related to moving from a defined benefit retirement system to a defined contribution
172 retirement system for new employees, including a system that maintains eligibility for
173 employees to participate in the Social Security system; qualifications for credit for service
174 pursuant to section 4 of said chapter 32, including minimum compensation limits for officials to
175 be eligible for credit for service, and the cost of any recommendations the commission may
176 make.

177 The public employee retirement administration commission shall conduct an actuarial
178 analysis to determine the costs of any recommendations made by the commission. The
179 commission shall prepare a report of its findings and recommendations, together with the
180 actuarial analysis and any recommendations for legislation, if any, to implement those
181 recommendations by filing the same with the clerks of the senate and house of representatives,
182 the chairs of the house and senate committee on ways and means and the senate and house
183 chairs of the joint committee on public service not later than September 1, 2009.

184 SECTION 23. Notwithstanding any special or general law to the contrary, any amount,
185 benefit or payment included in the definition of “regular compensation” by law or by regulation
186 prior to the effective date of this act and included in any applicable collective bargaining
187 agreement or individual contract for employment in effect on May 1, 2009, shall continue to be
188 included in the definition of “regular compensation” during the term of that collective
189 bargaining agreement or contract; provided, however, that any such amount, benefit or payment
190 received after June 30, 2012 shall not be considered regular compensation..

191 SECTION 24. Section 1 of this act shall take effect July 1, 2009.

192 SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however,
193 that creditable service shall be granted for the service of any state, county or municipal
194 employee serving in a paid position earning less than \$5,000 after July 1, 2009, if such service
195 is subject to a specified term as a result of an election, appointment or contract and the election,
196 appointment or contract occurred or was executed prior to July 1, 2009, and if the service is
197 otherwise eligible for creditable service under chapter 32 of the General Laws; and provided
198 further, that such creditable service shall be granted until the expiration of the term,
199 appointment or contract or July 1, 2012, whichever first occurs.

200 SECTION 26. Notwithstanding any general or special law to the contrary and except as
201 expressly provided otherwise, this act shall apply to all members of retirement systems who
202 retire after July 1, 2009.